Strasbourg, 15 February 2023

**Comments submitted by the Secretariat of the Council of Europe**

**on the UN Committee on the Rights of the Child’s draft General Comment no.26 on children’s rights and the environment with a special focus on climate change**

The Secretariat of the Council of Europe extends its gratitude to the UN Committee on the Rights of the Child for the opportunity to submit comments on the draft General Comment no.26 on children’s rights and the environment with a special focus on climate change. These comments reflect the views of the Secretariat of the Council of Europe and do not necessarily reflect the official position of its member States.

The Council of Europe’s work on the rights of the child and the environment is strongly grounded in the UN Convention on the Rights of the Child and its Optional Protocols. The standards developed by the Council of Europe provide further guidance to its member States, thus complementing the efforts at global level.

The European Convention of Human Rights does not specifically include the right to a healthy environment[[1]](#footnote-1). Therefore, it does not protect the environment but the effects of its degradation on people. The European Court of Human Rights (ECtHR) has dealt with more than 300 complaints related to this under arts. 2, 3, 6, 8, 10, 11 ECHR and art. 1 P.1. For more information about the ECtHR please see the [Factsheet on the environment, the ECHR](https://echr.coe.int/Documents/FS_Environment_ENG.pdf) and [Factsheet on the execution of ECtHR judgments](https://rm.coe.int/thematic-factsheet-environment-eng/1680a00c09) and the [3rd edition of its Manual on Human Rights and the Environment](https://rm.coe.int/manual-environment-3rd-edition/1680a56197). There is currently a pending case on climate change and children’s rights, which has been given priority status[[2]](#footnote-2).

In addition, the recommendations, resolutions and declaration of the Committee of Ministers, the Parliamentary Assembly and the Congress of local and regional authorities, in this field, form a solid set of rules, standards, principles and information which can assist states in providing the necessary basis for looking after the protection of children’s rights in the context of the environment across the 46 member States of the Council of Europe. From 1999 the PACE has recommended several times to the Committee of Ministers to draw up an additional Protocol to the ECHR on the right to a safe, clean, healthy and sustainable environment[[3]](#footnote-3).

It is important to highlight that the [Council of Europe Strategy for the Rights of the Child (2022-2027)](http://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27) includes a number of measures to protect and promote children’s environmental rights, dedicating for the first time one if its strategic objectives (the sixth) to children’s rights in crisis and emergency situations. As the Strategy indicates, the current environmental crisis puts children at particular risk of harm, given both the short and the long-term consequences, climate change and environmental degradation will have on migration movements as well as on children’s enjoyment of the highest attainable standard of physical and mental health. It outlines the importance of recognising the human rights obligations as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. As a result, references to this Council of Europe key policy instrument on children’s rights will be found throughout this document.

During the Launching Conference of the Strategy, held in Rome in April 2022, the deep dive conversation “Recognising and enforcing children’s environmental rights” took place. The importance of international standards were considered crucial to settle an environmental agenda from a child-rights approach. All panellists and participants recognised children and young activists as a group particularly concerned by environmental harm but also key players in the action against climate change. They have proven to be deeply concerned (eco-anxiety) about the urgent need for effective action and want to be part of the solution. In order to tackle climate change and environmental degradation, it was overwhelmingly agreed that human and societal structures, behaviours and mind-sets must change, that environmental education is needed at schools and finally that children must have their voices heard without fear of reprisals. Children participating in the discussions expressed their concerns and posed the following key questions: How much are we ready to give up (in standard of living and lifestyles) to save our planet? Are we ready to give up technology and resources we don’t need? Is society ready for a change? They called for an urgent change of mindset and for implementing small changes in our daily lives.

1. **GENERAL REMARKS**

We warmly welcome the inclusion in the draft General Comment of the majority of the children’s rights standards enshrined in the UN Convention on the Rights of the Child. As the Council of Europe tools and standards are readily applicable beyond the pan-European region, it would be relevant and useful to reference these standards as part of the General Comment on children’s rights and the environment.

Even though the draft General Comment already includes most of the principles to protect and fulfil the rights of the child and the environment with a special focus on climate change, the Council of Europe invites the Committee to consider the following comments, which follow the structure of the draft General Comment.

1. **SPECIFIC RIGHTS OF THE CONVENTION AS THEY RELATE TO THE ENVIRONMENT (Section III)**

**A. The right to life, survival and development (Art. 6).**

With respect to the right to life, the Council of Europe shares the view of the Committee that the right to life is threatened by avoidable environmental impacts, which are closely linked to other fundamental challenges impeding on its realisation, such as poverty, inequality, and conflict. Though the Committee has, in the draft General Comment, included two sections on the responsibilities of businesses in relation to the environment and children’s rights, we would propose to add already a general mention that states responsibilities in the protection of the right to life extends beyond the management of a state’s activities and also encompass the actions of non-state actors. Accordingly, states should provide safeguards for all environmental threats to the life, survival and development of children, and such measures should extend to all sectors of governance and all sectors of the economy (§16-17).

Furthermore, the Secretariat appreciates the view of the Committee that, in safeguarding children’s rights to survival and development, states should implement laws and policies that ensure children’s survival and physical, mental, spiritual, moral, psychological, and social development as well as the inclusion of the life-course perspective, which is a necessary consideration for states in their environmental decisions, to determine all factors required for children’s right to survival, growth and to develop to reach their full potential according to their varying needs at different stages of their maturation and development.

**B. The right to the highest attainable standard of health (Art. 24).**

The Committee’s view that the realisation of the right to the highest attainable standard of health requires proper resourcing of environmental policy and programming to ensure the specific needs of children are met and adequately addressed is welcomed. We share the view of the Committee that this right includes the access of children affected by environmental harm to functioning public health and health-care facilities, goods and services, with particular attention being drawn for access to particular groups of children in vulnerable situations.

As regards mental health, the second strategic objective of the Council of Europe’s Strategy for the rights of the Child (2022-2027) affirms that children are experiencing mental health difficulties, while at the same time lack access to mental health services. Its innovation objective 2.2.10 aims to foster children’s access to mental health support, dealing with the root causes of children’s mental health difficulties, and promoting children’s mental well-being, including through support for parents, carers, professionals and volunteers working with children to raise awareness and fight taboos about children’s mental health.

In accordance with the interpretation by the European Committee for Social Rights, health systems must be prepared to respond appropriately to avoidable health risks; risks that can be controlled by human actions. Since avoidable risks also include those which result from environmental threats,[[4]](#footnote-4) we would propose to elaborate at this stage (§29) on states’ obligation with respect of taking every step to eliminate avoidable risks resulting from environmental threats. Indicators such as infant mortality are good indicators of measuring how well a particular country’s overall health system is operating. As an avoidable risk, every step should be taken, particularly in highly developed health care systems, to reduce these rates to as close as zero as possible, and this includes when they stem from environmental threats.[[5]](#footnote-5)

The issue of air pollution can also be elaborated upon here in this respect. We agree with the Committee that under-five mortality and disease can be prevented through the reduction of air and other forms of pollution (§29). Recalling the [Council of Europe Parliamentary Assembly Resolution 2286 (1019) “Air pollution: a challenge for public health in Europe](https://pace.coe.int/en/files/27716/html)”, we invite the Committee to consider including the recommendation for states to establish clean air/zero-emissions zones around schools and institutions ensuring full-time care of children.[[6]](#footnote-6)

**C. The right to education**

The Council of Europe agrees that education is one of the cornerstones of a child rights-based approach to the environment. In this regard, the sixth strategic objective of the Strategy for the Rights of the Child (2022-2027) recognises the importance of upholding the right to an education with respect for nature and which raises awareness of natural hazards and environmental risks.

**D. The Right to an Adequate Standard of Living (Art. 27).**

As recognised in the second strategic objective of the Council of Europe’s Strategy for the Rights of the Child (2022-2027), climate change, environmental degradation, forced displacement, migration and conflicts are also causing inequalities and poverty among children. The Strategy therefore insists in the importance of tackling poverty caused by environmental degradation. Indeed, children affected by environmental degradation should not be subjected to forced evictions without prior provision of adequate alternative accommodation. At the same time, the reality demonstrates that children are being forced to flee their homes as a result of climate-change induced events. We agree with the Committee that in situations of cross-border displacement and migration linked to climate- and environment-related events, the importance of international cooperation and that states should undertake all appropriate measures to ensure the rights covered by the Convention apply to all children within their jurisdiction (§44). However, as has been iterated in the [Council of Europe Parliamentary Assembly Resolution 2415 (2022) “Inaction on climate change – a violation of children’s rights”](https://pace.coe.int/en/files/29688/html) recalling [Parliamentary Assembly Resolution 2307 (2019) “A legal status for “climate refugees”](https://pace.coe.int/en/files/28239/html), we recommend including in this section the necessity for states' collaboration with a view to establish an international legal status for environmental refugees and protecting the victims of forced migration due to climate change and environmental degradation, in particular children.

Additionally, it would also be useful to add a reference to [Council of Europe Parliamentary Assembly Resolution Resolution 2401 (2021) “Climate and migration”](https://pace.coe.int/en/files/29524/html), to include in this section a call upon states for the better use of science and technology to improve communication on and predictability of migration trends. In doing so, states should undertake, both nationally and internationally, a side-by-side mapping of climate change and migration, using the latest developments in science and technology. Since merging dynamic mapping of climate change with dynamic mapping of migration would help determine migration trends and build reliable predictions; policymakers would have a clearer picture of where people are likely to move from (regions/countries), where they are likely to go, in what numbers and when.

**E. The right to rest, play, leisure, recreation and cultural and artistic activities (Art. 31).**

Play and recreation are indeed an essential aspect to the health, well-being and development of children in promoting creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength on skills. We agree with the wording of the Committee in this section (§45), however we would like to propose to include a special reference to the cultural heritage dynamics that nature may especially hold and serve in respect of some places and some cultures.

**F. The right of indigenous children (Art. 30).**

The focus on indigenous children being particularly disproportionately affected as a result of environmental degradation, pollution and climate change is welcomed. In accordance with [Explanatory Memorandum to Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a7b73e), attention is drawn to paragraph49, in protecting the rights of indigenous children, states should take measures to respect, preserve and maintain knowledge, innovations and practices of indigenous peoples and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity. To do so, states should also promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices, and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices of indigenous communities. Additionally, in application of the precautionary principle in this respect, states need to also ensure that measures taken in the protection of the environment (such as wind farms or green constructions) do not negatively affect the lives and livelihood of indigenous children living in their communities.

**G. The right to non-discrimination (Art. 2).**

As highlighted by the Committee certain groups of children face heightened barriers to the enjoyment of their rights in relation to the environment due to multiple and intersecting forms of discrimination. As adopting a children’s rights approach means looking holistically at the factors that affect each individual child, the support for the inclusion of identifying examples of certain groups of children that may be disproportionately affected as a result of environmental degradation and climate change is welcomed.

The Committee might wish to include a stronger emphasis on the intersectional forms of discrimination being a “vicious circle”. As is recognised by [Council of Europe Parliamentary Assembly Resolution 2400 (2021) “Combating inequalities in the right to a safe, healthy and clean environment”,](https://pace.coe.int/en/files/29523/html) children affected by inequalities in access to environmental rights are often caught in this vicious circle of multiple discrimination. Those already affected by racisms are harder hit by climate change, for instance, and the same goes for the poorest groups, as adaptation to climate change depends largely on household wealth. Disadvantaged groups of children are consequentially more exposed to the adverse effects of climate change, which in turn increases their situation of vulnerability to damage caused by natural hazards and lowers their capacity to cope and recover.

**H. The best interests of the child (Art. 3)**

It is furthermore welcomed that the Committee calls on member States to take immediate action in the face of the climate crisis, according to national capacities, in the interest of the rights of the child and of future generations, including by systematically assessing the impact of relevant legislation and policies on children and future generations in terms of the right to a safe, clean, healthy and sustainable environment (see [Council of Europe Parliamentary Assembly Resolution 2415 (2022) “Inaction on climate change – a violation of children’s rights](https://pace.coe.int/en/files/29688/html)”).

**I. The right of the child to be heard (Art. 12).**

When discussing the topic of environment-related matters and climate change, the involvement of children and youth organisations and other children and young people in the design of any new legally binding framework for environmental rights is necessary and prerequisite to conditions for success. To this end, the fifth strategic objective of the Council of Europe Strategy for the Rights of the Child (2022-2027) highlights the importance of empowering children to access information and to participate in decisions related to the environment, at different levels of decision making, leading to the co-designing of environmental policies.

More generally, this has also been outlined in the [Recommendation 2218 (2022) “The right to be heard – Child participation: a foundation for democratic societies”](https://rm.coe.int/thematic-factsheet-environment-eng/1680a00c09), where the Parliamentary Assembly underlined that considering children’s views on any decisions affecting their lives is an essential precondition for building democratic societies.

It is undeniable that children and young people are acutely more aware of the state in which previous generations are leaving the planet; are on the whole more respectful of the need to end wasteful and damaging practices; and have shown their power to exert pressure on governments and decision makers. It should be added that States should actively consider to seek to include youth representatives more systematically in their legislative and policy decision-making processes, and to do so may require states preparedness to reform national decision-making processes to involve children’s participation. States should seek to include child participation and consultation mechanisms or to set up new ones, as appropriate, in order to ensure that children can contribute meaningfully to the drafting of policies and legislation so as to mainstream climate change action throughout various sectors.

The Council of Europe has also developed [a Child Participation Assessment Tool](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806482d9) which could be utilised by states seeking to adopt child participation measures. The assessment tool provides 10 specific and measurable indicators for measuring the national progress in implementing [Recommendation CM/Rec(2012)2 on participation of children and young people under the age of 18](https://rm.coe.int/168046c478), and Article 12 of the UNCRC. These indicators are split into three cross-cutting groups of protecting the right to participate, promoting awareness and creating spaces for participation, and can be applied to policy and decision-making on matters concerning children’s rights in the context of environmental and climate change laws, policies and measures (see also the [*Implementation Guide*](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806482da)).

**J. Freedom of expression, association and peaceful assembly (Arts. 13 and 15)**

The Committee’s emphasis on children’s rights to freedom of expression, association and peaceful assembly should not be subjected to restrictions other than those that are lawful, necessary, and proportionate is welcomed. The fifth strategic objective of the Council of Europe Strategy for the Rights of the Child (2022-2027) recognises that children as defenders of human rights face challenges in standing up for their own rights and in being taken seriously. In this sense, its innovation objective 5.2.6 aims at protecting and empowering children acting as defenders of human rights and of the environment.

Therefore, the inclusion of the requirement for States to specifically protect the rights of environmental child rights defenders is very positive. In this regard, the Committee of Ministers adopted in 2008 a [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d3e52), and the Steering Committee for Human Rights adopted an [Activity report](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d4449) on the same topic. They might be useful as an inspiration to develop this section in the draft General Comment.

**K. Access to remedies and justice (Art. 4).**

The fourth strategic objective of the Council of Europe’s Strategy for the rights of the Child (2022-2027) recognises that children are not always provided with access to the justice system and are not always informed in a child-friendly manner, of their rights, the steps of the proceedings, their particular role in them or the legal decisions which affect them. Therefore, its objectives include the need of improving children’s access to justice in relation to environmental harm and particularly children’s access to the European Court of Human Rights.

The section on remedies could be further improved by adding the following considerations, emanating from the [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010)](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3):

1. Remedial judicial and non-judicial mechanisms referred to in §64 should comply with the principles of child-friendly justice.
2. In order to ensure appropriate reparation through restitution, compensation and satisfaction (§47) consideration could be given to strengthen this even further through the establishment of funds for the compensation of child victims or measures or programmes aimed at providing therapeutic or other support.

Businesses also need to provide effective complaints mechanisms and also information which is accessible, age-appropriate and available in the language of the child about how to introduce such complaints and seek redress. States could also be invited to ensure that reports received through these mechanisms are dealt with efficiently and within reasonable time.

1. **THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT (Section IV)**

The Council of Europe standards offer valuable benchmarks and guidance to states in ensuring that children’s right to a clean, healthy, and sustainable environment is adequately safeguarded. As per the content of the draft General Comment, we welcome the mention of both substantive and procedural elements towards state’s realisation of the right to a clean, healthy, and sustainable environment. Under the European Social Charter, overcoming pollution also accounts as a primary objective to be achieved gradually in order to fulfil the right to a healthy environment. In order to ensure that states strive to attain this objective within a reasonable time, by showing measurable progress and making the best possible use of the resources at their disposal, we believe it would be appropriate to build on this provision (§73). We suggest the following guarantees should be considered in relation to states obligations and the right to a healthy environment:

Air pollution:

1. Develop and regularly update sufficiently comprehensive environmental legislation and regulations;[[7]](#footnote-7)
2. Take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level[[8]](#footnote-8) and to help to reduce it on a global scale;
3. In the case of global pollution, emission control is assessed with reference to the objective set for implementation of the United Nations Framework Convention on Climate Change, and of the Kyoto Protocol to the UNFCC;[[9]](#footnote-9)
4. Ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery, effective and efficient, that is comprising measures which have been established to be sufficiently dissuasive and have a direct effect on polluting emission levels;[[10]](#footnote-10)
5. Access health risks through epidemiological monitoring of the groups concerned.[[11]](#footnote-11)
6. **GENERAL OBLIGATIONS OF STATES (Section V)**

**F. Children’s rights and the business sector**

In terms of states obligations with respect of businesses and enterprises, the [Council of Europe Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a83df1) affirms that member States should require business enterprises to act in compliance with their human rights responsibilities related to the environment, including by applying a smart mix of measures – national and international, mandatory and voluntary. The [Explanatory Memorandum](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a7b73e) of CM/Rec(2022)20 specifies this Recommendation, which is also applicable to children’s rights and would translate in recommending member States:

* to incorporate the environmental dimension of business responsibilities with respect of children’s rights into national policies and strategies, including in national action plans dealing with children’s rights in the context of the environment;
* to apply the necessary measures to encourage or, where appropriate, require business enterprises that are domiciled within their jurisdiction to apply children and human rights due diligence throughout their operations, and those that conduct substantial activities within their territory to carry out human rights due diligence in respect of such activities, as appropriate to the size of the business enterprise and the nature and context of the operations. In doing so, businesses should avoid causing or contributing to adverse human rights impacts through environmental harm, address such impacts when they occur, and seek to prevent or mitigate adverse human rights impacts that are directly linked to their business activities, as recommended by [CM/Rec(2016)3 on human rights and business;](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Rec(2016)3) and
* to take appropriate steps, in accordance with their international obligations, to ensure that when such business-related human rights abuses resulting from environmental harm abuses occur, those affected, including children, have access to effective judicial and non-judicial remedies.

Last but not least, it is relevant to mention that during the deep dive conversation “Recognising and enforcing children’s environmental rights”, which took place in Rome during the Launching Conference of the new Strategy for the Rights of the Child, it was concluded that Governments should:

* Enact national legal and policy frameworks which address climate change and environmental protection from a child-rights approach.
* Create safe spaces for children to express themselves, protecting children and adult human rights defenders from reprisals;
* Ensure access to justice for children in climate cases;
* Ensure that environmental education happens at all levels, both for children and professionals (e.g. prescribing it through law);
* Raise awareness of children and adults to induce new behaviours and mind-sets (inter-generational justice)

1. **CLIMATE CHANGE (Section VI)**

In line with the draft General Comment (§101), the [Council of Europe Parliamentary Assembly Resolution 2415 (2022) “Inaction on climate change – a violation of children’s rights](https://pace.coe.int/en/files/29688/html) has also called on states, in the best interests of children, to give priority to climate change adaptation policies favouring the resilience of children to climate change and initiatives to improve the quality of the life and health of children, notably via the development of resilient and green infrastructures in schools, the obligation to use short supply routes for food products and the promotion of “good for the planet” meals in schools. These examples could be added to the General Comment.

1. “Neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect” Kyrtatos v. Greece, 2003 [↑](#footnote-ref-1)
2. Duarte Agostinho and others v. Portugal y other 32 States. [↑](#footnote-ref-2)
3. Recommendation 2211 (2021) and Resolution 2396 (2021) on “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”. [↑](#footnote-ref-3)
4. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, decision on the merits of 6 December 2006, §§ 194-195, §202 [↑](#footnote-ref-4)
5. Conclusions 2003, France. [↑](#footnote-ref-5)
6. Council of Europe Parliamentary Assembly Resolution 2415 (2022) Inaction on climate change – a violation of children’s rights. 8.7. [↑](#footnote-ref-6)
7. Conclusions XV-2(2001), Addendum, Slovak Republic [↑](#footnote-ref-7)
8. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §203 [↑](#footnote-ref-8)
9. Conclusions XV-2 (2001), Italy. [↑](#footnote-ref-9)
10. Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §203, 209-210, and 215. [↑](#footnote-ref-10)
11. Ibid. §203 and 220. [↑](#footnote-ref-11)